90-7090

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

GEORGE B. SOLIMAN d/b/a
SPHINX & PYRAMIDS PROPERTIES AND
INVESTMENTS, INC.

PETITIONER

V.

EDDINS ENTERPRISES, INC.

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

FROM THE COURT OF APPEALS

FIFTH DISTRICT OF TEXAS AT DALLAS

PETITION FOR WRIT OF CERTIORARI

GEORGE B. SOLIMAN, PRO SE
4515 Dorset Road
Dallas, Texas 75229
(214) 351-6508

QUESTIONS PRESENTED

1. Whether a violation of the 5th Amendment due process right, as incorporated through the 14th Amendment of the United States Constitution, has occurred if a district court refuses to hear the counterclaims of fraud, misrepresentation, and harassment initiated by the non-movant prior to the dismissal of the case-in-chief as a result of a Summary Judgment entered for the Movant, a non-party, which resulted in the denial of property rights to the non-movant and the termination of a sub-lease wherein the Movant was not even a party to the sub-lease?

2. Whether a violation of the 5th Amendment due process right, as incorporated through the 14th Amendment of the United States Constitution, has

occurred if an Appeals Court affirms a Trial Court's Summary Judgment against a party in a contract action, thereby resulting in the denial of property rights to the defeated party, where the winning Summary Judgment Movant was not an original signator or party to the original sub-lease contract?

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Petitioner, George B. Soliman d/b/a Sphinx & Pyramids Properties and Investments, Inc., respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the Court of Appeals Fifth District of Texas at Dallas entered in the above entitled cause on July 12, 1989.

I. OPINIONS BELOW

The memorandum opinion of the Court of Appeals is attached as Appendix A. No opinion was issued by the Supreme Court of Texas.

II. JURISDICTION

The opinion of the Court of Appeals Fifth District of Texas at Dallas was filed on the 1st day of May, 1989. The Jurisdiction of the Court is invoked pursuant to 28 U.S.C. sec. 1257.

III. U. S. CONSTITUTIONAL PROVISIONS INVOKED

AMENDMENT V [1791]

> ..No person be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use without just compensation. Exhibit G.

AMENDMENT XIV, SEC. 1 [1868]

> ...Nor shall any State deprive any person of life, liberty or property, without due process of law nor deny to any person within its jurisdiction the equal protection of law. Exhibit H.

IV. STATEMENT OF THE CASE

The subject property in this case is a restaurant. Petitioner bought the restaurant for $65,000.00 and signed a sublease with Prufrock Limited, Inc.

("Prufrock"). Respondent was never a party to that sublease. Prufrock never sent Petitioner a copy of its original lease with Respondent as promised in the Sublese. Petitioner was only able to obtain a copy of the original lease between Prufrock and the Respondent, and an option agreement to extend said lease, from the seller of the restaurant.

Petitioner chose not want to exercise the option until he was convinced the restaurant business would be promising, which eventually occurred. On or about December 1985, Petitioner asked Prufrock if it could make some improvements and additions to the restaurant. Prufrock referred Petitioner to Respondent (landowner) to obtain written approval of said additions, which Petitioner later obtained and completed. Said improvements and additions, which cost an additional amount of

approximately $25,000.00 were then made by the Petitioner.

In February 1986, Petitioner decided to exercise said lease option agreement which was to extend his sublease until July 1994. Respondent and Prufrock thereafter denied the existence of the option. When Petitioner showed them the copy he had obtained from the Seller, they denied signing it and then when Petitioner challenged Respondent and Prufrock to solve the problem in a court of law. Respondent and Prufrock then changed their story, and remembered signing it. However, Respondent claimed that the option was not intended for Petitioner's benefit, and it filed a declaratory judgment against Petitioner. As a cover up, Respondent included Prufrock as a Defendant. The reason Petitioner mentions a "cover up" is

because Petitioner was the only party served with process in the case.

Petitioner, who believed that the option agreement to extend the original lease is genuine, on or about November 1986 filed a counterclaim against Respondent and Prufrock. Respondent and Prufrock admitted in their subsequent oral deposition on or about December 1986 **that Respondent was negotiating with General Motors to move its car dealership to where Petitioner's restaurant was located** which explains why Respondent was eager to get Petitioner out of that location with the help of Prufrock.

Respondent and Prufrock, for the purpose of harassing and injuring Petitioner, failed to perform their duty to maintain the restaurant even after Petitioner found out from Respondent's and Prufrock's oral depositions that the restaurant had a history of roof problems

which resulted in material leaks which flooded the kitchen and the dining room of the restaurant. After numerous unsuccessful written complaints and requests to Prufrock, and Petitioner's lessee to fix the leaky roof, which was not fixed for almost twelve months, the City of Dallas Health Department closed the restaurant down due to a leaky roof in the kitchen area on or about June 1987.

This closing caused tremendous harm to Petitioner's restaurant which, after unsuccessful tries to reopen the business following its closing which proved impossible. The Petitioner decided to close down the restaurant on or about October 1987 since, after the Respondent patched the roof, but it leaked again after the restaurant was reopened. Since Petitioner signed the sublease with

Prufrock on August 1985 and had been making the monthly sublease payments to Prufrock, even after Petitioner closed the restaurant down, Prufrock refused to abate the sublease payment. Petitioner was making the sublease payments to Prufrock through a special arrangement with Prufrock and was to inform Petitioner before depositing his rent checks since the restaurant operation had stopped.

On or about March 1988, when Respondent decided to force Petitioner out, hoping to put an end to the counterclaims pending in court for approximately twenty months in court, Prufrock for the first time, handed Petitioner's rent check to Respondent without informing Petitioner, knowing that the funds would not be in the bank to cover the check. Respondent drove to the bank and had the check stamped NSF.

Even though Prufrock admitted in its oral deposition on or about December 1986 that the lease payment to Respondent was always paid on the first of the month to Respondent regardless if Petitioner paid them or not, because Prufrock and Respondent had a lease contract between themselves alone. After Respondent had Petitioner's sublease rent check stamped NSF, it filed a Summary Judgment to terminate the lease between Prufrock and Respondent, and to also terminate Petitioner's sublease with Prufrock.

Erroneously, the trial court dismissed the twenty month old pending counterclaim allegations by Petitioner against Respondent and Prufrock based on the summary judgment on May 26, 1988. Respondent, a few weeks later, gave Petitioner two days to empty the restaurant and remove all of his

equipment, claiming that it would start construction for a new restaurant building soon for a new tenant. It was to be used for Respondent's car dealership. The restaurant was actually demolished on or about July 1988, to destroy any evidence of roof problems and to prepare the property for the Respondent's dealership. The lot remains empty pending litigation. Respondent left the old restaurant sign up for additional misleading conduct.

Petitioner appealed to the Texas Appeals Court, 5th District of Texas at Dallas, and the Court of Appeals affirmed the trial court's Judgment on May 1, 1989. Rehearing was denied on July 12, 1989. Petitioner applied to the Supreme Court of Texas for a Writ of Certiorari. It was denied and the second application for a Writ was also denied.

V. REASONS FOR GRANTING THE WRIT

Certiorari should be granted in this case for the following reasons:

1) Petitioner was denied the due process of law as a result of the dismissal of his counterclaims against Respondent-Third Party when the Third party was granted an erroneous summary judgment.

2) Petitioner was deprived of his property without due process in violation of the 5th and 14th Amendments of the United States Constitution.

In Barrett Computer Serv. Inc., v. PDA. Inc., 884 F.2d 2141 (5th Cir. 1989), the Court reversed the District Court's grant of a Summary Judgment to PDA on the grounds that Barrett Computer Servicefailed to demonstrate that a genuine issue of material fact existed as

to whether Barrett Computer Service had standing to bring a suit against PDA. In McDonough Caperton Shepherd Group, Inc., v. Academy of Medicine, 888 F.2d 1392 (6th Cir. 1989), the Court reversed the District Court's grant of a Summary Judgment for Ohio Health Care when the Court found that all of the Appellant's counterclaims should not have been dismissed, necessitating a remand for adjudication of those limited counterclaims improperly dismissed. In Hawaiian Life Ins. Co. v. Laygo, 884 F.2d 1300 (9th Cir. 1989), the Court reversed the district court orders granting Summary Judgment to Appellee, and the Court stated that Laygo was entitled to an opportunity to explain her action and the consequences resulting from what Appellee's agent did. In A & A Concrete, Inc., Adams, v. The White Mountain Apache

Tribe, Patterson, 781 F.2d 1411 (9th Cir. 1986), the Court reversed and remanded the District Court's summary judgment in favor of Appellee because the court stated that it read the record in the light most favorable to the non-moving party, which resulted in no genuine material fact to establish that the moving party is entitled to Summary Judgment as a matter of law. See also Growley Steel Corp. v. Sharon Steel Corp., NVF Co., 782 F.2d 781 (8th Cir. 1985), (where the Court reversed and remanded the District Court's judgment for dismissal of a case against Growley Steel Corp. stating it they had suffered no recoverable actual damages). In Excel Handbag Co. v. Edison Brothers Stores, Inc., 630 F.2d 379 (5th Cir. 1980), the Court reversed and remanded the trial court's directed verdict for Appellee on the questions of punitive damages on

Appellee's cross-appeal with respect to the trial court's statement of the law on commercial bribery as a defense in contract actions and on the waiver of that defense. The trial court's dismissal of a third party defendant and the directed verdict to dismiss the anti-trust counterclaim were also reversed.

This Supreme Court is the final result to ensure and protect people's rights, especially if they are asked to. In this case, this Supreme Court has the opportunity to discover how people, and corporations abuse their wealth, influence and connections through our legal system to deprive innocent people not so fortunate, of their liberty and property without due process of law in violation of our Constitutional rights.

In Fuentes v. Shevin, 407 U.S. 67 (1972), this Supreme Court stood firm and

held that the Florida and Pennsylvania replevant provisions work a deprivation of property without due process of law insofar as they deny the right to a prior opportunity to be heard before property is taken thus, they were declared order unconstitutional, in order to protect the rights of the innocent. Roy Peralty v. High Medical Center, Inc., 485 U.S. 80 (1988) this Supreme Court held that the judgment had to stand absent a showing of a meritorious defense to the action in which judgment was entered without proper notice to Appellant, a judgment that had substantial adverse consequences to Appellant. By reason of the due process clause of the 14th Amendment, when a person has been deprived of property in a manner contrary to the most basic tenants of due process, "it is no answer to say that in this particular case, due process of law would have led to the same result

because he had no adequate defense on the merits." Vitek, Correctional Director v. Jones, 445 U.S. 480 (1980) this Supreme Court also stood firm to protect the constitutional rights in due process that transferring a convicted felon to a mental hospital without adequate notice, even if it was pursuant to a state statute, was a violation of the Constitutional rights of the convicted felon because it was without adequate notice and opportunity for a hearing, depriving him of liberty without due process of law contrary to the 5th and 14th Amendments.

In Logan v. Zimmerman Brush Co., 455 U.S. 422, this Supreme Court reversed the judgment of the Illinois Supreme Court saying that the failure to comply with the 120 days convening requirement deprived the commission of jurisdiction

to consider Appellant's charge and rejected Appellant's arguments that his federal due process and equal protection right would be violated. In Goldberg v. Kelly, 397 U.S. 254 (1970), this Supreme Court affirmed the Judgment that residents receiving financial aid under the federal assistant aid program are entitled to notice and hearing to protect their due process rights before doing such aid terminated. Justice Brennan delivered the opinion that held terminating public assistance payments to a particular recipient without affording him the opportunity for an evidentiary hearing prior to the termination denies the recipient procedural due process in violation of the due process clause of the 5th and 14th Amendments.

This Court always emphasizes the importance of prior hearing and notice, and an opportunity to be heard in almost

all of the cases they are asked to rule in, such as National Collegiate Athletic Assoc. v. Jerry Tarkanian, 488 U.S. 179 (1988), Arizona v. Youngblood, 488 U.S. 51 (1988), Goss v. Lopez, 419 U.S. 565 (1975), Cleveland Bd. of Education v. Loudermill, 470 U.S. 532 (1985), and Mullane v. Central Hanover Bank & Trust, 339 U.S. 306 (1950).

Petitioner respectfully requests that he be provided an opportunity to be heard on his counterclaims at the trial level.

VI. CONCLUSION

For the reasons set forth above, a Writ of Certiorari should issue to review the judgment and the opinion of the Dallas Court of Appeals in this matter.

RESPECTFULLY submitted,

GEORGE B. SOLIMAN, PRO SE

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APPENDIX A

NO. 86-10790-G

EDDINS ENTERPRISES, INC., PLAINTIFF	*	IN THE DISTRICT
	*	OF DALLAS COUNTY,
V.	*	
	*	TEXAS
PRUFROCK, LTD.,	*	
GEORGE B. SOLIMAN d/b/a SPHINX AND	*	134TH JUDICIAL
PYRAMIDS PROPERTIES AND INVESTMENTS,	*	DISTRICT
INC., DEFENDANT	*	COURT

ORDER GRANTING PLAINTIFF'S AMENDED MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT SOLIMAN AND FOR SEVERANCE

BE IT REMEMBERED that on the 23rd day of May, 1988, there came on to be heard Plaintiff's Amended Motion for Summary Judgment as against Defendant GEORGE B. SOLIMAN d/b/a SPHINX AND PYRAMIDS PROPERTIES AND INVESTMENTS, INC. ("SOLIMAN") concerning SOLIMAN'S counterclaims for damages due to lost profits and/or future lost profits for breach of roof repairs and for slander of

title. Further, aid Motion for Summary Judgment encompassed the termination of the present lease between Plaintiff and Defendant PRUFROCK, LTD., and SOLIMAN for non-payment of rent; thereby resulting in the termination of the alleged Option Agreement; the above two (2) counterclaims of Defendant SOLIMAN, being all of the counterclaims alleged by Defendant SOLIMAN against Plaintiff; and the Court having determined that it is vested with jurisdiction of the parties and subject matter thereupon examined and considered the Amended Motion for Summary Judgment, together with pleadings of the Plaintiff on file herein, Defendant SOLIMAN'S answers to Interrogatories, the deposition of Harold Co, accountant for SOLIMAN, SOLIMAN'S depositions and Affidavit of Sondra Morganti of EDDINS ENTERPRISES, INC., together with the contest of Defendant SOLIMAN to this

Motion, and therefrom is of the opinion that Plaintiff's Amended Motion for Summary Judgment should be granted in all respects.

It is, therefore, ORDERED, ADJUDGED and DECREED that Plaintiff's Amended Motion for Summary Judgment is, in all respects, granted with reference to Defendant SOLIMAN and accordingly this Court has determined that there is on legal basis under the law for the counterclaim for lost profits or future lost profits by virtue of the breach of the roof repairs; further, as to slander of title, there is no allegation and evidence as the elements necessary to state and prove a cause of action.

It is further ORDERED that the Option Agreement in issue in this cause has been terminated in that said Option Agreement terminated by virtue of

Defendant SOLIMAN'S failure to pay the rentals provided in the lease and sublease agreement presently existing between the parties; therefore, the option terminated as a matter of law.

It is further ORDERED, ADJUDGED and DECREED that Plaintiff's claim for attorneys' fees from Defendant SOLIMAN, Plaintiff's claim against Defendant PRUFROCK, and Defendant PRUFROCK'S counterclaim against Plaintiff are hereby severed from this cause and shall be decided in a separate and independent cause number in the 134th District Court and will be docketed as Cause No. _____ and, therefore, are not further included as subject matter in this cause of action.

It is further ORDERED, ADJUDGED and DECREED that by virtue of this Order, there are no remaining issues in this cause to be adjudicated and, therefore,

this Summary Judgment shall constitute the Final Judgment herein and, accordingly all other relief not expressly granted herein is hereby denied.

It is further ORDERED, ADJUDGED and DECREED that all costs of this proceeding are taxed against Defendant SOLIMAN, for all of which let execution issue.

SIGNED the 26 day of May, 1988.

/s/
Judge, Presiding

APPENDIX B

COURT OF APPEALS

FIFTH DISTRICT OF TEXAS

AT DALLAS

GEORGE A. SOLIMAN D/B/A SPHINX AND PYRAMIDS PROPERTIES AND INVESTMENTS, INC., APPELLANT	*	NO. 05-88-00901-CV
V.	*	
EDDINS ENTERPRISES, INC., APPELLEE	*	

JUDGMENT

In accordance with this Court's opinion of this date, the judgment of the trial court in favor of appellee Eddins Enterprises, Inc., is AFFIRMED.

It is ORDERED that appellee, Eddins Enterprises, Inc., recover its cost of this appeal from appellant, George A. Soliman, and from the cash deposit in lieu of cost bond. After all costs have been paid, the clerk of the district court is directed to release the balance,

if any, of the cash deposit to George A. Soliman.

May 1, 1989.

/s/
GERALD T. BISSETT
JUSTICE, RETIRED

88-00901.JF

COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
AT DALLAS

NO. 05-88-00901-CV

GEORGE A. SOLIMAN D/B/A SPHINX AND PYRAMIDS PROPERTIES AND INVESTMENTS, INC., APPELLANT	*	FROM A DISTRICT COURT OF DALLAS
V.	*	
EDDINS ENTERPRISES, INC., APPELLEE	*	COUNTY, TEXAS

BEFORE CHIEF JUSTICE ENOCH, JUDGE ONION[1]
AND JUSTICE BISSETT[2]
OPINION BY JUSTICE BISSETT
MAY 1 1989

This is an appeal from a summary judgment in favor of Eddins Enterprises, Inc., plaintiff in the trial court, hereafter "Eddins," against George B.

1. The Honorable John F. Onion, Jr., Presiding Judge, Retired, Court of Criminal Appeals, sitting by assignment.

2. The Honorable Gerald T. Bissett, Justice, Retired, Court of Appeals, Thirteenth District of Texas, at Corpus Christi, sitting by assignment.

Soliman, d/b/a Sphinx and Pyramids Properties, Inc.,, defendant in the trial court, hereafter, "Soliman." We affirm.

Soliman purports to appeal from an order signed on May 26, 1988, which granted summary judgment against him, and, at the same time, from an order signed on June 3, 1988, which struck his third amended counterclaim, filed on May 12, 1988. Five points of error are presented.

Soliman, in his first point of error, contends that the trial court's order of June 3, 1988, "was made in contravention of Rule 21," which amounted to a denial of due process of law. The remaining four points concern the summary judgment.

Points of error two through five read as follows:

Point Two

The issues of whether or not the Amendment to Lease is valid, whether Eddins' repudiation was unconscionable, and what were Eddins' damages were not disposed of by the nunc pro tunc order.

Point Three

Eddins cannot stand on a lease that he has repudiated by terminating Soliman's tenancy, and cannot thereby benefit from his wrongful conduct.

Subpoint A

The amendment to lease was binding on the parties and Soliman duly exercised the option to extend the lease period.

Subpoint B

Since Eddins had breached the Amendment by refusing to

honor Soliman's exercise of the option, Eddins cannot insist on performance by Soliman.

Subpoint C

Eddins should not be permitted to benefit from his interference with the contract and economic duress.

Point Four

Eddins' delivery of the Amendment without intention performing, was a misrepresentation on which it knew a buyer or buyers would rely and which caused Soliman's damages.

Point Five

Soliman is not limited to contract measures of damages for Eddins breach of the amendment, and has the right to tort damages because of the willful conduct of

Eddins as well as damages under the Deceptive Trade Practices Act for unconscionable conduct and exemplary damages.

Points two through five are not in accord with the requirements plainly set out in Rule 74(d) of the Rules of Appellate Procedure. None of the points charge the trial court with reversible error. They are nothing more than arguments and do not present any error for review. However, we have read Soliman's brief and will discuss the summary judgment proceedings in order to determine if the trial court committed reversible error in granting summary judgment to Eddins.

IN GENERAL

Eddins the owner of a certain tract of land in Dallas County, Texas, upon which a building was located, leased the premises to Prufrock, Ltd., Inc.,

hereafter "Prufrock," by written lease dated June 23, 1983. The lease was for a term of five years, beginning on August 1, 1983, and ending on July 31, 1988. It provided for a different minimum annual rental for each of the five years, which was payable in monthly installments, in advance, commencing August 1, 1983.

A restaurant business was conducted in the building that was located on the land covered by the lease at all times relative to this appeal. The restaurant business was sold by Prufrock to Alexander Czovek, who then sold the business to Feinwinn Chang, who later sold it to Soliman. The premises were subleased by Prufrock successively to Czovek, Chang and Soliman.

During the tenure of the sublessee Czovek, Eddins and Prufrock executed a document styled "Amendment to Lease dated

June 23, 1983, and Consent to Sublease," hereinafter referred to as the "amendment." The document in relative part, reads:

> WHEREAS, _____, hereinafter referred to as "Subtenant" desires to sublease the entire premises described in the Lease dated June 23, 1983 . . . from Tenant [Prufrock] . . .;
>
> THEREFOR in consideration of the following Amendments to the Lease and execution by Tenant and Subtenant of Exhibit "B", Landlord [Eddins] does hereby consent to the requested Sublease.
>
> * * *
>
> (1) The term . . . of the lease shall be modified to read as follows: . . . six (6) years beginning on August 1, 1983...

* * *

The Subtenant herein shall have the option not less than one hundred eighty (180) days in advance of July 31, 1989 to fully assume the Lease. Upon such assumption, the Tenant shall be released from all liability under the Lease to either the Landlord or the Subtenant. The effect of exercising such option will be to allow an additional five (5) year term to the Subtenant upon the same terms and conditions as provided in the Lease except that minimum rent shall be increased by CPI not to exceed seven percent (7%) each year of the option term.

The document was not dated. The name of the subtenant does not appear in the

original document.

Eddins alleged that this document was executed for the benefit of Czovek, but it never became effective because it "was never executed by Czovek." Thereafter, Soliman obtained a copy of the document and wrote his name in the blank as the subtenant. Soliman then claimed that he had exercised the option and that he had a valid lease on the premises which would not expire until July 31, 1994. Eddins disputed this claim.

THE PLEADINGS

Eddins filed a suit for declaratory judgment on August 16, 1986, against Prufrock and Soliman. It was alleged that the purported exercise of the option by Soliman was ineffective; that during the pendency of this litigation Soliman refused and failed to timely make the percentage rental payments as required by

the June 23, 1983 lease contract, which caused the June 23, 1983 lease to terminate.

Prufrock filed a general denial in answer to Eddins' petition and a counterclaim against Soliman. Prufrock is not a party to this appeal and is not affected by the judgment now on appeal.

Soliman responded with an original answer to Eddins' petition, and filed a counterclaim against Eddins and Prufrock for the recovery of damages allegedly caused by fraud on the part of Prufrock and ratification of fraud on the part of Eddins, unconscionable conduct by Eddins for breach of the lease contract i failing to repair the roof of the building situated on the leased land, and for slander of title to his leasehold estate.

THE SUMMARY JUDGMENT PROCEEDINGS

Several "motions for summary judgment" and "motions for partial summary judgment" were filed by both Eddins and Soliman. Only three of the motions related to this appeal; they are: (1) Motion for Partial Summary Judgment filed by Soliman on November 25, 1987, and Eddins' response filed on December 30, 1987; (2) Motion for Partial Summary Judgment filed by Eddins on December 17, 1987, and Soliman's response filed on January 4, 1988; and (3) Eddins' Amended Motion for Summary Judgment filed on April 28, 1988, and Soliman's response filed on May 14, 1988.

Soliman, in his motion for partial summary judgment, asserted: (1) that the amendment was valid; (2) that he succeeded to the rights of Chang, the sublessee who sold the restaurant business to him; and (3) that he legally

exercised the option contained in the amendment. The summary judgment proof offered by him consisted of: (1) a copy of the amendment (which is identical to the copies of the amendment attached to Eddins' several motions for summary judgment as exhibits); (2) Soliman's affidavit, which does not bear the signature and seal of a notary public, and is therefore, of no probative value; (3) the bill of sale from Chang covering the restaurant business and certain items of personal property incident to the business; and (4) a copy of a letter from Soliman to Eddins, dated February 10, 1986, which notified Eddins that Soliman exercised "the option to allow one additional five year term to the subtenant starting July 31, 1989 and ending July 31, 1994." Soliman, in his motion, also incorporated by reference

the affidavits of Harold Sweat and Phil Cobb, which he said were attached to the motion for summary judgment by Prufrock (previously filed). The affidavit of Harold Sweat is not in the record before us and, therefore, is not reviewable to us.

Eddins, in its motion for partial summary judgment, stated: (1) there is no evidence that it defrauded Soliman, or that it ratified or participated in the fraud, if any, that may have been committed; (2) there is no evidence that it engaged in any unconscionable conduct with respect to Soliman, as alleged by Soliman in his counterclaim against it (Eddins); (3) Soliman did not purchase the restaurant business from it, and has no legal complaint against it concerning the purchase value of the business; (4) Soliman, under the June 23, 1983 lease contract, was required to make monthly

rental payments and could make capital improvements if he chose to make any such improvements; and (5) there is no legal basis for Soliman to recover from it the purchase price of the restaurant or the cost of capital improvements made by Soliman. The summary judgment evidence proffered by Eddins in support of his motion consisted of the deposition of Soliman, wherein he testified: (1) he purchased the restaurant business and certain items of personal property from Chang in August 1985, and subleased the land from Prufrock (other summary judgment evidence shows that the sublease was dated August 29, 1985; (2) he never talked to anyone at Eddins in connection with the purchase of the restaurant business; (3) Eddins did not "get" him to purchase the restaurant or to "lease" the premises; (4) he made certain

improvements to the building that housed the restaurant, which he called "capital improvements;" (5) Eddins did not encourage him to make the improvements, but granted him permission to make them; (6) Eddins did not represent to him the "value of the business" prior to his purchase thereof; (7) his claim for damages amounted to $180,000.00, classified by him as reimbursements for purchase price of the restaurant, capital contributions, capital improvements and past-paid rent; (8) Chang showed him a copy of the "amendment" and "option in July or August, 1985; (9) Chang did not tell him he (Chang) had "exercised that option; (10) he never discussed the "option" with anyone at Eddins prior to the date he purchased the restaurant business from Chang; (11) he wrote his name in the blank copy of the option in March or April of 1986; (12) Chang did

not misrepresent anything to him concerning the sale of the restaurant; and (13) Eddins failed to repair the "leaks" in the building after request to do so, and that such failure caused the Health Department of Dallas to close the restaurant.

Eddins, in his amended motion for summary judgment alleged: (1) Soliman, in his counterclaim, pled that it 9Eddins had breached a covenant to repair the roof of the building and slandered the title to Soliman's leasehold estate for which he asked to be compensated, but that the damages sought were also for alleged future lost profits of the business; (2) since there was no evidence of past profits, there cannot be a recovery of damages for future lost profits caused by the alleged breach of covenant to repair the roof; (3) it is

not liable in damages to Soliman because of slander of title because such claim was made in a judicial action brought by it against Soliman, and damages for such action are not recoverable as a matter of law; (4) neither Prufrock nor Soliman paid the rent due on march 1 1988, and April 1, 1988, which amounted to a default and caused Eddins to terminate the lease for nonpayment of rent; and (5) Soliman waived any complaint that Eddins failed to repair the roof to the building because he failed to notify Eddins in writing of the need for such repair, as required by the lease. The summary judgment proof offered by Eddins consisted of: (1) the June 23, 1983 lease contract; (2) the amendment; (3) the sublease between Prufrock and Soliman; (4) the deposition of Soliman; (5) the deposition of Harold Cox which we do not treat as evidence since it is not in the

record before us; and (6) the affidavit of Sondra Morganti, the financial officer and bookkeeper for Eddins, who stated: (a) Eddins received two checks, signed by Soliman, each in the amount of $2,483.11, on April 15, 1988; (b) one of the checks was dated March 1, 1988, and stated that it was for "March Rent," and the other check was dated April 1, 1988, and stated that it was for "April Rent"; (c) both checks were presented for payment and were returned unpaid and marked "insufficient funds"; (d) the rent for the months of March and April of 1988 were not timely paid by either Prufrock or Soliman; and (e) Eddins terminated the lease by letter to Prufrock and Soliman dated April 21, 1988, which letter is attached as an exhibit to Morganti's affidavit.

Soliman, in response to Eddins'

amended motion for summary judgment, alleged: (1) the business was profitable during the month of March and September of 1986; (20 the closing of the restaurant by the City Health Department in May 1986 caused him to sustain losses to the point "that he could not afford to keep the restaurant open after October, 1987;" (3) Eddins "habitually accepted rent late," and he (Soliman) tendered the rent for the months of March, April and May of 1988, which tender was refused by Eddins; and (4) under the circumstances, Eddins waived its right, if any, "to insist on timely payment of rent." The summary judgment proof offered by Soliman in support0t of his response consisted of: (1) an affidavit of Jay M. Goltz, his attorney, who stated that on April 28, 1988, he tendered to Eddins a cashier's check in the amount of $7449.33 "for the correct amount of the rent on the lease"

in payment for the rent for March, April and May of 1988; and (2) an affidavit of Kay Needham, a secretary to Mr. Phil Cobb of Prufrock, who stated: (a) that it was her responsibility to collect rent from Soliman and to pay the same to Eddins; (bO that she never recalled "receiving or paying the rent on the first day of the month on which the rent was due;" (c) that Soliman was sometimes thirty days late in paying the rent; and (d) that Prufrock "never received an objection to the untimely manner of paying the rent."

THE SUMMARY JUDGMENTS

The trial court, by judgment nunc pro tunc signed on March 21, 1988, decreed: (1) the partial motion for summary judgment filed by Soliman against Eddins on the declaratory actions brought against him by Eddins "is hereby denied in all respects; and (2) Eddins' motion

for partial summary judgment on "Soliman's counterclaims is granted in all respects." The nunc pro tunc judgment was rendered in lieu of the trial court's judgment "of February 23, 1988." The judgment of February 23, 1988, is not in the record before us.

The trial court, by judgment signed on May 26, 1988, granted Eddins amended motion for summary judgment, and decreed: (1) that there is no legal basis under the law for the counterclaim for lost profits or future lost profits by virtue of the breach of the roof repairs; further, as to slander of title, there is no allegation and evidence as the elements necessary to state and prove a cause of action; (2) that the option agreement in issue in this cause has been terminated in that said option agreement terminated by virtue of Soliman's failure to pay the rentals provided in the lease

and sublease agreement presently existing between the parties; therefore, the option terminated as a matter of law; (3) that Eddins' claim for attorneys' fees from Soliman and Prufrock's counterclaim against Eddins are severed from this cause and shall be decided in a separate and independent cause of action and, therefore, are not further included as subject matter in this cause of action; and (4) that by virtue of this order, there are no remaining issues in this cause to be adjudicated and, therefore, this summary judgment shall constitute the final judgment herein and, accordingly, all other relief not expressly granted here is denied. Soliman has appealed.

Soliman does not present any points of error wherein he complains that the trial court erred in rendering summary

judgment for Eddins because there were genuine issues of fact to be resolved. Therefore, he has waived any complaint concerning fact issues. See Norton vs. Marks, 703 S.W.2d 267, 273 (Tex. App.--San Antonio 1985, writ ref'd n.r.e.); Mullinax, Wells, Babb and Cloutman, P.C. v. Sage, 692 S.W.2d 533, 536 (Tex.App.--Dallas 1985, no writ).

The evidence offered by Eddins in support of his motion for motion for partial summary judgment has already been set out and will not be repeated. We conclude from such evidence that: (1) Eddins did not have any knowledge of the fraud or misrepresentations alleged by Soliman in his counterclaim against Eddins; consequently, there was no fraud or misrepresentations for Eddins to ratify; (2) Soliman purchased the restaurant from Chang, not Eddins, and paid a fair and reasonable price

therefor, with or without the alleged option; (3) Eddins did not encourage Soliman to make capital improvements; (4) Soliman (until default) paid the monthly rentals to Prufrock, who then paid them to Eddins; (5) there is no disparity in value between the purchase price paid by Soliman to Chang and the value of the restaurant; (6) Soliman's alleged damages consisting of the restaurant purchase price, capital improvements and rentals previously paid by him have no relation to any alleged wrongful conduct by Eddins; and (7) there is no evidence of any unconscionable conduct by Eddins.

The summary judgment evidence adduced was conclusive of all counterclaims alleged by Soliman at the time the motion was heard. The trial court correctly granted Eddins' motion for partial summary judgment.

As already noted, Eddins, in its amended motion for summary judgment, alleged that there were no disputed facts concerning: (1) the issue that the lease had been terminated; (2) the issue that Soliman was entitled to recover damages for alleged lost future profits; (3) the issue of slander of title of Soliman's leasehold estate; and (4) the issue of the alleged breach of the covenant to repair the roof.

Eddins contends that there was no evidence produced by Soliman to substantiate his claims that he had legally extended the terms of the lease through July 31, 1994, by the attempted exercise of the option contained in the amendment, and that he was entitled to damages for lost future profits, slander of title and failure to repair the roof. We agree.

The lease contract provided that the

rent to be paid from "August 1, 1987 thru July, 1988" was $2,607.26 per month, "due in advance on the first day of each and every calendar month during the term of this lease." The lease also provided that the tenant shall be deemed to be in default if such tenant fails to pay "any installment of rent on the date that same is due and such failure shall continue for a period of ten (10) days." The lease further provided that upon default that the landlord (Eddins) had the option to "terminate this lease."

It is undisputed that Soliman did not timely pay the rent for the months of March and April of 1988; the checks tendered by him were not in the correct amounts and they were returned for "insufficient funds." The cashier's check was tendered to Eddins on April 28, 1988; it, too, was untimely since it was

tendered fifty-eight days after March 1, 1988, and twenty-seven days after April 1, 1988. Eddins legally terminated the June 23, 1983 lease on April 21, 1988. Therefore, the existence of the alleged option and the insistence by Soliman that the lease had been extended through July 31, 1994, by his exercise of the option were rendered moot when the lease was terminated.

Soliman contend that he was not required to pay rent because of Eddins' refusal to recognize the validity of the option. We disagree. Eddins did not repudiate the main lease, but merely denied the existence of an effective option as to Soliman. If anything was repudiated, it was the option agreement, which did not affect Soliman's duty to continue to pay rent until the lease expired.

A covenant to pay rent in a

commercial lease is independent of all other covenants, except habitability. See Davidow v. Inwood North Professional Group-Phase I, 747 S.W.2d 373, 375 (Tex. 1988). Soliman had an independent duty to pay rent, and such duty was in force during the months of March and April, 1988. Even if Eddins had repudiated the main lease, Soliman's duty of performance under the lease continued until he treated the repudiation as a breach, which is done by filing suit for termination of the lease or damages for breach. Vise v. Foster, 247 S.W.2d 274, 280-81 (Tex.Civ.App.--Waco 1952, writ ref'd n.r.e.). Soliman did not file such a suit against Eddins.

Soliman also claims that Eddins was not legally entitled to terminate the lease because of late payment of the monthly rent because it had accepted late

payments in the past and had waived the provisions in the lease which provided that it could terminate the lease if a monthly rent was not paid within ten days after the first day of the month. We do not agree. The lease contains a provision that no past waiver of compliance shall constitute a waiver of future compliance. Consequently, Soliman has o legal basis for claiming waiver of compliance because of Eddins' accepting late rent payments in the past. See Giller Industries, Inc. v. Hartley, 644 S.W.2d 183, 184 (Tex.App.--Dallas 1982, no writ).

Soliman also alleged that Eddins breached the covenant to repair the roof of the restaurant building, and that as a result of such breach he was damaged by the loss of future profits. Summary judgment evidence showed that the restaurant operated at a loss for the

years 1986 and 1987. The fact that there was some evidence that the restaurant showed a profit for two months is not sufficient to establish that it was profitable during the period that Soliman operated the business. There is no evidence of lost future profits, and Soliman cannot recover damages on that basis. See Atomic Fuel Extraction Corp. v. Slick's Estate, 386 S.W.2d 180, 189 (Tex.Civ.App.--San Antonio 1964, writ ref'd n.r.e., 403 S.W.2d 784 (Tex. 1965)).

Concerning the repair to the roof of the restaurant building, the lease required Eddins (landlord) to maintain the roof. However, it also required the tenant to give written notice of the needed repairs. There is no evidence that Soliman or Prufrock ever gave written notice to Eddins that the roof as

in need of repairs.

In order to recover damages for slander of title, the complainant must allege and prove: (1) the uttering and publishing of disparaging words; (2) that they are false; (3) that they were malicious; (4) that the complainant sustained special damages thereby; and (5) that the complainant possessed an estate or interest in the property disparaged. Clark v. Lewis, 684 S.W.2d 161, 163 (Tex.App.--Corpus Christi 1984, no writ); American National Bank & Trust Co. v. First Wisconsin Mortgage Trust, 577 S.W.312, 316 (Tex.Civ.App.--Beaumont 1979, writ ref'd n.r.e.). Additionally, a party must plead and prove the loss of a specific sale. A. J. Belo Corp. v. Sanders, 632 S.W.2d 145, 146 (Tex. 1982). There is no summary judgment evidence in Soliman's summary judgment response that Eddins had ever published to any third

party interested in purchasing or lease the subject restaurant that he did not have an option to extend the lease. There is no evidence in Soliman's response that he lost a specific sale because of the alleged slander of title.

Moreover, a claim asserted in the cause of a judicial proceeding cannot be made the basis of a slander of title action, and the filing of a suit for declaratory judgment does not constitute a publishing since the assertions made therein are privileged. Lucas v. Blalock, 543 S.W.2d 715, 718 (Tex.Civ.App.--Amarillo 1976, writ ref'd n.r.e.).

Following the hearing on Eddins' amended motion for summary judgment, there were no genuine issues of material fact present in the case. The trial court correctly granted Eddins' amended

motion for summary judgment. Points of error two through five are overruled.

Soliman filed a supplement to his third amended answer and counterclaim against Eddins on May 12, 1988, wherein he alleged:

I.

> Eddins had renounced the Amendment to Lease dated June 23, 1983, and Soliman has heretofore insisted that Eddins perform said agreement. Soliman thereby elects to accept such renunciation and sue for damages.

II.

> Eddins has breached the implied warrant habitability [sic] by failing and refusing to make repairs to the roof on the premises and question which made the premise unfit for the purposes for which the property

was leased. Soliman owed Eddins no duty of payment of rent because of such breach.

Eddins filed a motion to strike Soliman's third amended counterclaim on May 20 1988. The attorney for Eddins certified that a true and correct copy of Eddins' motion to strike was mailed via certified mail to the attorney for Soliman at his Dallas address on May 20, 1988. The trial judge granted Eddins motion to strike by order signed on June 3, 1988.

Soliman's first point of error one reads:

> The trial court's order of June 3, 1988, made after a Summary Judgment disposing of all remaining issues, was made in contravention of Rule 21 and the due process clauses of the

Constitution of the United States and State of Texas.

Soliman argues that his third amended counterclaim was improperly struck and "the question of Eddins' breach of the implied covenant of habitability remain undisposed of" because he was not served with the motion to strike at least three (3) days before a hearing on the motion. We do not agree.

Rule 21, TEX. R. CIV. P. (1989) provides that service of a motion, unless presented during a hearing or trial, shall be in writing and notice thereof shall be served on the adverse party not less than three days before a hearing thereon. That rule applies to Eddins' motion to strike. The required three days notice does not include the day of service or the day of hearing.

Martinez v. General Motors Corp. 686 S.W.2d 349, 351 (Tex. App.--San Antonio 1985, no writ).

Soliman's attorney was served with a copy of the motion to strike in a proper manner. There is no contention made by Soliman that his attorney did not reasonably receive such copy. The order which struck the motion recites that the motion was "heard" by the trial court, although the date of hearing was not set out in the order. Presumably, the hearing was held on June 3, 1988. We hold that the motion to strike was served on Soliman at least three (3) days before the hearing thereon. The trial court's order was not "made in contravention of Rule 21," and since Soliman's third amended counterclaim against Eddins was disposed of by the

trial court, the summary judgment rendered on May 23, 1988, was a final judgment. See Order of this Court, rendered on January 30, 1989, in Cause No. 05-88-00901-CV, wherein it was stated: [a]ppellant correctly brings this appeal from the final judgment in Cause No. 86-10790-G (the number assigned to this instant case in the trial court).

Soliman's point of error one is overruled.

The judgment of the trial court is affirmed.

/s/
GERALD T. BISSETT
JUSTICE, RETIRED

DO NOT PUBLISH
TEX. R. APP. P. 90

88-00901.F

APPENDIX C

May 11, 1989

Chief Justice Enoch

Judge Onion

Justice Bisset

Court of Appeals

5th District of Texas at Dallas

RE: Case # 05-88-02-901-CV

Your Honors:

I am in receipt of your Opinion about my appeal from a Summary Judgement in favor of Editions Enterprises, Inc. I would like to take this time to explain in detail what the two main issues in this lawsuit cover.

The two issues concerning this case are as follows:

1) Option (Amendment to Lease) between Prufrock and Eddins

2) Roof Repair

I find my case lost in the shuffle between many minor issues rather than pinpointing the main issues state above. Additionally, I feel the two main issues are not addressed in detail due to the fact the trial was prevented in a court of law through a Motion for Summary Judgment to terminate the lease for default in late payment of rent.

I am going to attempt to explain my version of the dispute through your opinion, but ask you to please take the time to read it and keep in mind the main issues.

Page 5, Third Line

Czovek, Eddins and Prufrock executed the Option (Amendment to Lease) dated June

23, 1983. This information is not factual; the Option (Amendment to Lease) was executed by Eddins and Prufrock only. The Option (Amendment to Lease) was simply created so Prufrock could sell the restaurant and it so happened Czovek was around at that time as a sub-tenant. Prufrock delivered to Czovek, Czovek in turn delivered the Option (Amendment to Lease) to Chang. When Chang was trying to sell the restaurant Chang gave the original Option (Amendment to Lease) to the real estate agent and gave me a copy of it. Later I received the original Option (Amendment to Lease) from the real estate agent.

Eddins and Prufrock denied the existence of the Option (Amendment to Lease) first. When presented with a copy of the Option they denied signing it. When challenged, they once again changed their direction

to ask about the original document. I find it strange that between two supposedly good businessmen, an original was nowhere to be found. As previously stated. I obtained the original from the real estate agent. Finally their direction was to claim it as done for the benefit of Czovek. All of this happened in a period of six (6) months. Proof as to the numerous times they changed direction is in writing to attorneys as well as oral depositions.

Page 17. Number 4

This is the result of legal techniques and short cuts to confuse the main issue. Once again used to deprive me from my day in court.

Page 17. End of Page.

Number 1 you state Eddins had no

knowledge of fraud or misrepresentation. How can this be justified when Eddins changed directions so many times. First he denied the existence of the Option (Amendment to Lease) and then denied his signature, then requested the original, then changed his direction again, to whom the option benefited.

Additionally, a legal document should have no blank lines except if it is for the convenience of the person who requested. Please note, there is a blank line where the name of the person who is going to exercise the option.

And if you do not call all of the above fraud or misrepresentation, I would like to know what it is considered in the court of law.

Page 18. Number 2

Once again that is not the main issue. I never claimed I bought the restaurant from Eddins nor did I ever claim I paid an unfair and/or unreasonable price for the restaurant. Due to the Option (Amendment to the Lease) I had no reason to say such statements. I disagree 100% with you when saying with or without the alleged option I would have purchased the restaurant. To further prove my point, the oral deposition of Chang, states without the options available I would not have bought the restaurant.

Page 18. Number 3

Once again this is not the main issue of the dispute.

Page 18. Number 4

Under normal business circumstances,

failure to pay rent is a cause for termination of a lease. As explained in detail, the business was closed down by the Health Department due to the maintenance of the leaky roof. This, under normal business circumstances, is a failure to carry out obligations as outlined in the lease. The leaky roof almost killed my business, resulting in my having a limited cashflow. Therefore, under these circumstances, I was unable to pay rent timely. Where is fairness in this situation. This is one of the many reasons I would like to try this case in a court of law.

Additionally, the oral deposition of Phil Cobb states Phil Cobb pays rent to Eddins Enterprises at the beginning of each month. Whether or not rent has been received from the subtenant or not.

Page 18, Number 5

This is not the main issue. If I was granted the option, I would agree with you when you state there is no disparity in value between the purchase price I paid to Chang and the value of the restaurant. However, I will have to disagree with you since I was not granted the option.

Page 18, Number 6 and 7

I am confused by what "wrongful conduct" means. Because Eddins denied me the option, harassed me to the point of suing me, failing to maintain the roof resulting in me being shut down by the Health Department, I do not know what else it could be called except "wrongful conduct" on their part.

Page 19

In reference to the statement "You agreed about everything Eddins contends about no evidence of legally extending the term of the lease through July 31, 1994". I did everything correctly that was required of me in order to exercise the option. What is wrong or illegal in my doing so?

Since I did everything correctly to exercise my option, I am entitled to damage for lost future profits, damage for slander of title, and also damage for failure to repair the roof.

Page 19. (Last Paragraph)

Page 20. (Beginning of Page)

This area speaks about the amount of rent, conditions under how rent should be paid, how default will occur, and under what grounds Eddins can terminate the lease.

A legal document holds obligations and duties for both parties involved to perform. I find it extremely unfair to see the right of one side and ignore their obligations, and in the meantime see the obligation of the other side and ignore their rights. I find this happens only in countries where there is no justice.

Page 20, Middle of Page

As it has been said through this letter numerous times, the reason behind insufficient funds and untimely payment of rent, was due to the closing of the restaurant by the Health Department for the reason of leaky roof. I was losing a substantial amount of money monthly.

Page 20. Last Paragraph

Beginning with "Therefore", I am unclear as to the meaning of "moot", however, if the way in which I understand it to mean you are speaking about the validity of the option since the lease was terminated. In the event the lease was terminated under normal circumstances, I would agree. The lease was terminated due to the insufficient funds and late payment of rent which was a result of harassment and unfair conduct carried by Eddins as previously discussed.

Page 21. Second Paragraph

You believe that the option (Amendment to Lease) is separate from the lease itself. If this is true this allows Eddins' hands free to do whatever he wants, fair or unfair. In most instances any amendments to change a contract go hand-in-hand with the said contract subject to whatever the amendment states. I was paying rent from

life's savings six (6) months after the restaurant was closed down because of their wrongful conduct.

Why are all fingers pointed at myself for not paying rent timely, when Eddins did not uphold his portion of the obligations? Where are the fingers pointed at him?

I might add that by totally killing my cashflow in the restaurant (closed by the health department for a leaky roof), working hard for my living, having a limited resource of capital, I feel it is unjust for me to "pave the way" for unfair and unethical doing by Eddins. I will not resort to deal drugs, rob banks or do anything else illegal to support Eddins' unethical way of business.

Page 21. Middle of Page

You are trying to tell me that since I stayed in the lease and was late paying rent, I have no chance of winning. I would have a better chance of winning if I would have taken the position that Eddins treated the repudiation as breach of contract, and then filed a suit for termination of the lease. I do not know how you concluded this due to the circumstances beginning May of 1986 until April, 1988. Eddins was unfair and unethical. And after all the events that happened during that period, I lose in a motion for Summary Judgement for late payment of rent because of their wrongful conduct for over two years. I will have to disagree with your conclusion.

Page 22. Last Paragraph.

Since there was no profit in 1986 and 1987, your opinion I am unable to allege damage for loss of future profits. I

took over the restaurant towards the end of August, 1985. Beginning in September 1985 until February, 1986, I was doing capital improvements by doing the following: building an outside sitting area to accommodate 50 additional persons, install an outside awning, and giving the inside of the restaurant complete "face life" in order to appeal to the public. All this time, I was providing from my limited resources of capital all material needed in addition to buying extra furniture.

I exercised the option February, 1986. From this time until May or June, 1986 I conducted a large campaign of advertising. This campaign including giving my food away on some occasions, or having a 50% off promotion by offering a "Buy One Get One Free". Business was

promising and the restaurant was packed week-days as well as week-ends. Remember, that during the time of remodeling we did not close down. Even during those months we were still ahead, once again showing the promise of the future.

Page 23. Second Half.

You mention there is no evidence that Soliman or Prufrock gave a written notice to Eddins that the roof was in need of repair. In the event that this evidence was not presented to you, please see copies of the letters written to Eddins on this matter.

Page 23. Last Paragraph

In order to recover damage for slander of title, the complainant must allege and prove:

1) The uttering and publishing of disparaging words:

This is proof due to the fact that Eddins Enterprise filed suit.

2) They were false:

They were suing me about the option they stated which they originally denied and then at a later date confirmed signing it.

3) They were malicious:

This is proven from the act of unfair and unethical way of doing business.

4) Complainant sustained special damages:

I have a written offer to sell my business.

5) Complainant possessed an estate or interest in the property:

I understand this will apply to me because I was a sub-tenant.

Page 24, Middle of Page

I reference to this statement that Eddins never published to a third party . . . . .

I dispute this due to the fact that just by Eddins suing me and denying my option (Amendment to Lease) is the same thing as publishing to a third party interested in purchasing or leasing the restaurant. Because I do business fair and ethical it is my obligation to inform any prospective buyer of any disputed and/or litigation regarding the lease. As all businessmen know, the first question asked from a prospective buyer is the status of the lease. In the event I misrepresented any facts about a lease, for a prospective buyer, and he took me to court, I am sure any judge would indict me for misrepresentation.

I'm sure you understand my business point on this matter. I would be a dishonest businessman if I waited for Eddins to inform my prospective buyer of any known dispute about the lease.

Remaining of Page 25, 26, 27 and 28
My attorney will need to take care of this as it contains legal language and techniques I am unfamiliar with.

There are many more facts and events to prove the great team effort between Eddins and Prufrock to bury me and put me out of business. Mr. Kelsoe (Eddins' attorney) told me in the fall of 1986 after an oral deposition at his office, located on Alpha Road, That quote, unquote, "Mark Eddins does not have anything against you personally, he just simply needs the property because he is

negotiating with General Motors to expand his dealership". Additionally, Mr. Kelsoe told me that Mark Eddins is offering me $20,000 to get out.

The conspiracy started when Phil Cobb and Mark Eddins took the same position about the existence of the option. (the signature on the option, requesting the original, and then both claiming the option was done for the benefit of a certain person).

When a lawsuit was filed against both of them on or about the beginning of 1987, Prufrock made 1 180 degree turn to confirm my position in the option. Phil Cobb offered me $10,000 in his office on McKinney Avenue. This money was over and above what Cobb told Eddins would offer to buy me out. At that time Phil Cobb stated he did not want to go to court.

He was even sympathetic when the health department closed us down because of the leaky roof. According to the correspondence from Prufrock they requested and demanded, in writing, from Eddins, to fix the roof. I am puzzled when you said that we do not have any request in writing from either myself or Prufrock to Eddins to fix the roof. For your review, I am attaching copies of said request.

In the oral deposition of Mr. Phil Cobb, Cobb stated that he does not wait for my rent to come to pay Eddins. Prufrock pays the at the beginning of the month because he is their tenant.

After the restaurant was closed down by the health department in June, 1987, my losses were up to $7,000 - $8,000 monthly

and I was unable to sustain these losses on a monthly basis. I decided to close the business on or about September or October, 1987 but continued to pay the rent from my savings.

I asked Prufrock to allow me to pay rent late and to call me before they deposited the rent check so I would be able to gather the money to cover the checks. They were more than willing, both orally and written to do this. They led me to believe that they could sympathize with me especially in these hard times I was encountering.

Much to my surprise, I found a letter awaiting after the above agreement was made, requesting payment of rent on time. Let me point out that it is my feeling Prufrock and Friendly Chevrolet knew the business was closed, knew I was paying rent from my limited savings account, and

last but not least knew my situation.

Prufrock knew the checks would be good only after calling me enabling me to cover it. Among themselves they decided the fastest way to get rid of me and the lawsuit i to hand deliver the rent checks for March and April from Prufrock to Eddins, and all what Eddins has to do is not to deposit the checks in their account because they would be taking a chance of if the checks would be good as we instructed the bank to tell us when the checks came and we informed Prufrock of that.

Instead, they took the checks and drove to cash the checks. Obviously, there was no money in the bank so they asked the teller to stamp it NSF. They drove back and gave the checks to the attorney and

requested a termination of the lease.

After these circumstances and events, if the legal and justice system is used to bury small innocent victims by big, conspiring people, I will have no faith whatsoever in our justice system. However, I will not rest until I get my fair chance no matter what I have to go through.

Your Honors, I know my letter may have some points and issues that have no relevance to our dispute but at least I am explaining the whole story so you can weigh the fairness of the whole event to the legal technicality so justice can be served.

Sincerely,

George B. Soliman

cc: Chief Justice Enoch
Judge Onion
Justice Bissett
Mark Eddins
Phil Cobb
Mr. Kelsoe
Mr. Jay Goltz
Mr. Kevin Nash

PS

This analogy is similar to my case

A) Represent a large guy (land owner)

B) Big guy (Tenant)

C) Small guy (Subtenant)

C Subleased the place from B under the condition that he live in peace and quite but never use his hand against A or B.

A Found out that they had a better use of the land

- So A & B, as a team effort, agreed to get C out of the place by mentally and physically abusing him and using every scare tactic and bluff exist to get rid of him.

- C sued A & B

- C Fainted and fell down from the

physical and mental abuse.

While A and B were kicking him C´s hand touched one of B´s feet while they were kicking him.

- A went to court for summary judgement to terminate C´s lease for using his hands, and he won.

In the meantime the court dismissed the two years pending suit for C against A.

Is that what justice is all about?

APPENDIX C-1

LETTER FROM SPHINX & PYRAMIDS PROPERTIES & INVESTMENTS, INC., TO PRUFROCK

July 21, 1986

Prufrock
2811 McKinney Avenue
Suitte 300 - Lock Box 106
Dallas, Texs 75024
ATTENTION: Mr. Phil Copp

Dear Mr. Copp:

We had to write this letter after the several telephone conversations we had with Ricky Henderson, regarding the roof leak and the damage it did to the kitchen air conditioning unit, as we are told by your repair man and also by two of our own independent air condition people.

As you know, Mr. Copp, to protect ourself and our customers healthwise the roof

leak need to be fixed, and either a new air condition unit to be installed in the kitchen or to fix the existing one, whatever is easier for you or for the landlord.

From reading a copy of the master lease, we assume it is the landlord's responsibility (Eddins Enterprises), please advise him of the seriousness of this matter for health reasons and for fire hazard reasons.

Please we need immediate action to be taken in that matter. If you like for us to fix it and deduct it from the rent we will do so if we do not hear from you within 10 days.

Sincerely

/s/
George B. Soliman

cc: Eddins Enterprises

APPENDIX C-2

LETTER FROM SPHINX & PYRAMIDS PROPERTIES & INVESTMENTS, INC., TO PRUFROCK

October 15, 1986

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Prufrock

2811 McKinney Avenue

Suite 200, Lock Box 106

Dallas, Texas 75204

Dear Mr. Phil Copp

This is the second letter I am sending to ask you to please get the lanlord or whoever is responsible to fix my roof and the air condition ujit in the kitchen, which was damaged because of the roof leak. I am afraid, with the winter and the rainy season coming, it will be a disaster if the roof collapse.

Last time when someone came to look at it they said they are going to fix it in a way that will ruin the image and appearance of our dining room, and of course you would not want to do that in your own place.

If the roof and the air condition unit will not be fixed within 10 days, I will have to get someone to fix it and deduct it from the rent. You are welcome to come and meet with me at the restaurant to see for yourself. Please advise.

Sincerely yours

/s/_____
George B. Soliman

My home telephone is: 351-6508

My car telephone is: 957-7000

My office tel. is: 620-2727

*You are welcome to call me at home anytime after 6 pm so we can take care of this problem.

APPENDIX C-3

LETTER FROM PRUFROCK RESTAURANTS TO MR. MARK EDDINS

May 8, 1987

Mr. Mark Eddins

Eddins Enterprises, Inc.

P. O. Box 7066

Dallas, Texas

Dear Mark:

Mr. George Soliman called me May 8, 1987 regarding roof leaks at Blues Lakefront Bar & Grill. I was told by Phil Cobb to contact you in regard to these leaks. Abdel, Manager, said that the Kitchen is flooded and half of the Dining Room had to be closed. Apparently this is a very bad situation and should be taken care of as soon as possible. It would be greatly appreciated if you could look into this

matter as soon as possible.

Sincerely,

/s/_____
Rickie Henderson
Phillip E. Cobb's Secretary

cc: Mr. Phil Cobb

Mr. Al Stark, Property Manager

Mr. George Soliman

APPENDIX C-4

LETTER FROM PRUFROCK RESTAURANTS TO MR. MARK EDDINS

June 18, 1987

Mr. Mark Eddins

Friendly Chevrolet

5601 Lemmon Avenue

Dallas, Texas 75209

Dear Mark:

We learned today that the City Health Department has closed Blue's Lakefront Bar & Grill due to leak problems still not repaired.

I'm sure this has caused tremendous harm to our subtenant's business. I would hope a speedy resolution will be forthcoming.

Sincerely,

/s/_____
Phillip E. Cobb

PEC:rh

cc: George Soliman

Al Stark

Doug Cawley - Johnson & Swanson Law Firm

APPENDIX C-5

LETTER FROM SPHINX & PYRAMIDS PROPERTIES & INVESTMENTS, INC., TO PRUFROCK

September 15, 1987

Prufrock

2811 Mckinney Ave.

Suite 300, Lock Box 106

Dallas, Texas 75204

Attention: Mr. Phil Cobb

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Dear Mr. Cobb:

This is to confirm our telephone conversation today tuesday the 15th of September, 1987 at 2:45 PM, in which I informed you about the leaky roof when it rained today. I also mentioned to you that if the health department come to inspect they property they would close it up again, and this time it will probably be for good until the roof is completely changed or redone, and if that happened

again it will be suicide to our business in the restaurant.

Your reply to me was that you would talk to Eddins Enterprises, the landlord, and you will also send them a letter and send us a copy of it.

Please follow up in this matter as quickly as possible. Your cooperation will be most helpful.

/s/
George Soliman

APPENDIX C-6

LETTER FROM PHILLIP E. COBB TO MR. AL STARK (EDDINS ENTERPRISES)

September 21, 1987

Mr. Al Stark

Eddins Enterprises

P. O. Box 7066

Dallas, Texas 75209

Dear Al:

This is a followup of our conversation of September 16, 1987, where I informed you of the leaking roof at Blue's Restaurant. Please contact the manager at Blue's or George Soliman; attached is George Soliman's letter of September 15, 1987, to me.

Very truly yours,

/s/

Phillip E. Cobb
Cobb Companies

cc: George Soliman

APPENDIX D

SUBLEASE

THE STATE OF TEXAS

COUNTY OF DALLAS

This Sublease is entered into between PRUFROCK LTD., INC., a Texas Corporation ("Sublesor") [sic] whose business address is 4319 Oak Lawn, Dallas, Texas, and George B. Soliman and Sphinx & Pyramids Properties and Investment, Inc., ("Sublessee") whose address is 10244 Epping Lane, Dallas, Texas. Mailing address is Box 670689, Dallas, Texas 75230.

SECTION I

DEMISE AND USE

Sublessor subleases to Sublessee and Sublessee subleases from Sublessor, only for the purpose of the operation of a restaurant and bar, the space described in Section II herein.

SECTION II

DESCRIPTION OF SPACE

The premises subject to this Sublease consist of all of the subleased premises described in Exhibit A attached hereto.

SECTION III

LEASE

Sublessor represents that it holds a Lease (herein so called) from EDDINS ENTERPRISES, INC., ("Owner"), a copy of which is attached hereto as Exhibit B and is included herein by reference.

SECTION IV

QUIT ENJOYMENT

If Sublessee performs the terms of this Sublease, Sublessor warrants that Sublessee will have quiet enjoyment and peaceful possession of the space subleased, and that it will defend Sublessee in such quiet enjoyment and

peaceful possession during the term of this Sublease without interruption by Sublessor or Owner, or of any person rightfully claiming under either of them.

SECTION V

SUBLESSOR TO PAY LEASE RENT

If Sublessee is performing all of its obligations hereunder and is not in default under this Sublease, Sublessor agrees to pay the rent reserved in the Lease, along with all percentage rents, common area maintenance charges and taxes and insurance due under the lease.

SECTION IV [sic]

TERMS OF SUBLEASE

The terms of this Sublease shall be on the same terms and conditions as the Lease, and Sublessee shall be required to adhere to these terms and conditions as though they were included verbatim in this Sublease.

SECTION VII

SUBLEASE RENT

Sublessee agrees to pay to Sublessor as rent for the premises at the same rate and amounts and at the same times as Sublessor pays in the Lease. Further, as additional rent, Sublessee shall pay all percentage rents, common area maintenance charges, taxes, and insurance at the same rate as required to be paid by Sublessor under the Lease, except that accured [sic] monthly percentage rent will be deposited monthly in an escrow account before the 15th day of each subsequent month. (See Sub-Sublease, Section XXII)

SECTION VIII

SUBLESSEE TO COMPLY WITH LEASE TERMS; INDEMNITY TO SUBLESSOR

Sublessee agrees to perform and observe the covenants, conditions, and terms of the Lease on the part of the Sublessor to be performed and observed,

except the payment of rent reserved in the Lease which shall be paid by Sublesor to Owner, and to indemnify Sublessor against all claims, damages, and expenses arising out of nonperformance or nonobservance thereof.

SECTION IX

LIENS

Sublessee shall keep the subleased premises free and clear of liens arising out of any work performed, materials furnished, or obligations incurred by Sublessee, including mechanics' liens.

SECTION X

ACCESS FOR INSPECTION AND REPAIRS

Sublessee shall allow Owner and Sublessor, and their agents, free access at all reasonable times to the premises sublet for the purposes of inspecting or making repairs, additions, or alterations to the premises or any property owed by

or under the control of Owner of Sublessor.

SECTION XI

WAIVER OF ONE BREACH NOT WAIVER OF OTHERS

Waiver of one breach of a term, condition, or covenant of this Sublease by either party hereto shall be limited to the particular instance and shall not be construed as a waiver of past or future breaches of the same or other terms, conditions, or covenants.

SECTION XII

TERMINATION AND RE-ENTRY BY SUBLESSOR ON SUBLESSEE'S DEFAULT

If Sublessee abandons or vacates the subleased premises or is dispossessed for cause by Sublessor before the termination of this Sublease, or any renewal thereof, Sublessor may, on giving ten (10) days' written notice to Sublessee, declare this Sublease forfeited and may thereafter make reasonable efforts to relet the

premises. Sublessee shall be liable to Sublessor for all damages suffered by reason of such forfeiture. Such damages shall include, but shall not be limited to, the following: (1) all actual damages suffered by Sublessor until the property is relet, including reasonable expenses incurred in attempting to relet; (2) the difference between the rent received when the property is relet and the rent reserved under this Sublease.

Until the premises have been relet, Sublessee agrees to pay to Sublessor, on the same days as the rental payments are due under this Sublease, the actual damages suffered by Sublessor since the last payment, either rent or damages, was made. After the premises have been relet, Sublessee agrees to pay to Sublessor, on the last day of each rental period, the difference between the rent received for the period from reletting

and rent reserved under this Sublease for that period.

SECTION XIII

LITIGATION COSTS AND ATTORNEY'S FEES

If any legal action is filed to enforce this Sublease or any term, condition, or covenant hereof, the Sublessor shall be entitled to recover as attorneys fee such sum as the court may deem reasonable, together with the costs of such action.

SECTION XIV

APPLICABLE LAW, VENUE, AND SERVICE

Texas law shall be used in interpreting this Sublease and in determining the rights of the parties under it. At the option of either party, venue of any action involving this Sublease may be in, or changed, to the County of Dallas.

Personal service either within or without the State of Texas shall be sufficient to give personal jurisdiction to any court in which an action is filed for litigation of rights under this Sublease.

SECTION XV

SURRENDER OF PREMISES AND KEYS AT TERMINATION

Sublessee agrees that at the expiration of this Sublease, it will quit and surrender the subleased premises without notice, and will deliver to Sublessor all keys belonging to the premises.

SECTION XVI

DISPOSITION OF FIXTURES AND PERSONAL PROPERTYAT TERMINATION OF LEASE

All alterations, additions, and improvements made by Sublessee affixed to the premises, shall become Sublessor's property, and shall be surrendered with

the premises as a part thereof. Sublessee may remove all personal property, trade fixtures, and office equipment, whether attached to the premises or not, provided that such may be removed without serious damage to the building or premises. All holes or damages to the building or premises caused by removal of such items shall be repaired and restored by Sublessee promptly after removal of the property. Sublessee shall be entitled to remove all electrical service connections installed by it which were designated specifically for the operation of electronic computing equipment.

SECTION XVII

REMOVAL OF PROPERTY BY SUBLESSOR BEFORE TERMINATION

If Sublessor re-enters the premises or takes possession of the before normal expiration of this Sublease, in

accordance with its terms, he shall have the right, but not the obligation, to remove from the subleased premises all personal property located therein and may place it in storage in a public warehouse at Sublessee's expense and risk.

SECTION XVIII

NOTICES

Except where otherwise required by statute, all notices given pursuant to the provisions of this Sublease shall be in writing, addressed to the party to whom the notice is given, and sent by registered or certified mail to the last known mailing address of the party. However, notices to Sublessee may be sent to the address of the subleased premises.

SECTION XIX

BINDING EFFECT ON HEIRS, SUCCESSORS, AND ASSIGNS

The terms, conditions, and covenants of this Sublease shall inure to and be binding on the heirs, successors, administrators, executors, and assigns of the parties hereto, except as otherwise herein provided.

SECTION XX

NO ASSIGNMENT OR SECOND SUBLEASE WITHOUT CONSENT

Sublessee shall not sell or assign this Sublease or any part thereof, or any interest therein, or re-sublet the subleased premises in whole or in part without first obtaining the written consent of Sublessor. This Sublease shall not be assigned by operation of law. If Sublessor once gives consent to assignment of this Sublease or of any interest therein, it shall not thereby be barred from afterwards refusing to

consent to any further sublease or assignment. Any attempt to sell, assign, or re-sublease without written consent of Sublessor shall be deemed sufficient grounds for dispossession and declaration of a default hereunder. If Sublessor shall consent to a sub-sublease or a sub-assignment of this Sublease, Sublessee shall not exercise any remedy or take any action pursuant to any instrument evidencing such sub-sublease or sub-assignment without the prior written consent of Sublessor, which consent may be withheld with or without cause.

Dated: August 29, 1985

Sublessee: George B. Soliman

/s/_____

Sublessor: Prufrock Ltd., Inc.

/s/_____

Guarantor: Finwin Chang

/s/_____

APPENDIX E

AMENDMENT TO LEASE

DATED JUNE 23, 1983

AND CONSENT TO SUBLEASE

WHEREAS EDDINS ENTERPRISES, INC., hereinafter referred to as "Landlord", and PRUFROCK LTD., INC., hereinafter referred to as "Tenant", entered into a lease agreement dated June 23, 1983 attached hereto as Exhibit "A" and included herein by reference; and

WHEREAS _____, hereinafter referred to as "Subtenant" desires to sublease the entire premise described in the Lease dated June 23, 1983 ("Lease") in Exhibit "A" from Tenant; Tenant desires to sublease to Subtenant with the Sublease to take the form of Exhibit "B" attached hereto and included herein by reference;

THEREFOR in consideration for the

following Amendments to the Lease and execution by Tenant and Subtenant of Exhibit "B", Landlord does hereby consent to the requested Sublease.

AMENDMENTS TO LEASE

DATED JUNE 23, 1983

(1) The term on page one of the Lease shall be modified to read as follows:

> TO HAVE AND TO HOLD the same for a term of six (6) years beginning on August 1, 1983 and continuing through July 31, 1989, upon the following terms, conditions, and covenants:"

(2) The Minimum Rental schedule on Page 6 should be amended to include the following:

LEASE PERIOD	AVERAGE RENT	MONTHLY RENT
Aug 1, 1988 through		

July 31, 1989 $32,851.54 $2,737.63

ADDITIONAL CONSIDERATION

FOR CONSENT

The Subtenant herein shall have the option not less than one hundred and eighty (180) days in advance of July 31, 1989 to fully assume the Lease. Upon such assumption, the Tenant shall be released from all liability under the Lease to either the Landlord or the Subtenant. The effect of exercising such option will be to allow one additional five (5) year term to the Subtenant upon the same terms and conditions as provided in the Lease except that Minimum Rent shall be increased by CPI not to exceed seven percent (7%) each year of the option term.

EDDINS ENTERPRISES, INC., LANDLORD

BY: /S/_____
MARK A. EDDINS

PRUFROCK LTD, INC., TENANT

BY: /S/_____
PHILLIP E. COBB,
EXECUTIVE VICE PRESIDENT

_____, SUBTENANT

BY:_____

APPENDIX F

COURT OF APPEALS

FIFTH DISTRICT OF TEXAS

AT DALLAS

GEORGE A. SOLIMAN D/B/A SPHINX AND PYRAMIDS PROPERTIES AND INVESTMENTS, INC., APPELLANT	*	NO. 05-88-00901-CV
V.	*	
EDDINS ENTERPRISES, INC., APPELLEE	*	

BEFORE CHIEF JUSTICE ENOCH, JUDGE ONION[1] AND JUSTICE BISSETT[2]

ORDER

Appellant's May 16, 1989 motion for rehearing is OVERRULED.

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1. The Honorable John F. Onion, Jr., Presiding Judge, Retired, Court of Criminal Appeals, sitting by assignment.

2. The Honorable Gerald T. Bissett, Justice, Retired, Court of Appeals, Thirteenth District of Texas, at Corpus Christi, sitting by assignment.

Appellee's May 25, 1989 motion to strike is GRANTED to the extent that the May 16, 1989 letter brief, filed by appellant George B. Soliman pro se, is ORDERED stricken. The Clerk of the Court is directed to return it to appellant George B. Soliman pro se. Appellee's request for sanctions in its May 25, 1989 motion is DENIED.

JULY 12, 1989

/S/
GERALD T. BISSETT
JUSTICE RETIRED

APPENDIX G AND H

IN THE SUPREME COURT OF TEXAS

-- -- -- --

NO. C-8959	*	November 22, 1989
	*	
GEORGE B. SOLIMAN	*	
d/b/a SPHINX &	*	
PYRAMIDS PROPERTIES	*	From Dallas County
AND INVESTMENTS,	*	
INC.	*	
	*	
VS.	*	Fifth District
	*	
EDDINS ENTERPRISES,	*	
INC.	*	

Application of petitioners for writ of error to the Court of Appeals for the Fifth District having been duly considered, and the Court having determined that the application presents no error of law which is of such importance to the jurisprudence of the State as to require correction, or reversal of the judgment of the Court of Appeals, it is ordered that said application be, and is hereby, denied.

It is further ordered that

applicants, George B. Soliman d/b/a Sphinx and Pyramids Properties and Investments, Inc., pay all costs incurred on this application.

****

NO. C-8959	*	November 22, 1989
	*	
GEORGE B. SOLIMAN	*	
d/b/a SPHINX &	*	
PYRAMIDS PROPERTIES	*	From Dallas County
AND INVESTMENTS,	*	
INC.	*	
	*	
VS.	*	Fifth District
	*	
EDDINS ENTERPRISES,	*	
INC.	*	

Petitioner's motion for rehearing of application for writ of error having been duly considered, it is ordered that aid motion be, and hereby is, overruled.

****

I, JOHN T. ADAMS, Clerk of the Supreme Court of Texas do hereby certify that the above and foregoing is a true

and correct copy of the order denying the application for writ of error and the motion for rehearing in the above styled and numbered case as the original order appears of record on file in this office.

IN TESTIMONY WHEREOF witness my hand and seal of the Supreme Court of Texas at the City of Austin, this the 18th day of June 1990.

[SEAL]

JOHN T. ADAMS, Clerk

By /s/
Barry E. Pickett
Deputy Clerk

APPENDIX I

May 27, 1988

District Court of Dallas County, Texas

134th Judicial District

Judge Burnett

Re: Case # 86-10790-G

Eddins Enterprises versus Prufrock &

George B. Soliman

To the honorable judge of the 134th Judicial district

Your honor

First congratulation [sic] on your new election position.

I respect and accept your decision in our dispute and I hope by writing this letter it will not effect my case in anyway, and I think my attorney will be dispointed [sic] in me for doing this, but I felt I had to do it because I believe in the fairness of our judicial system.

There is no purpose whatsoever for my letter, I just want to rerun all the facts in summary, which came from the parties involved on our dispute and all these facts were documented in their oral deposition, correspondence, conversation, affidavids [sic] or actual events.

George B. Soliman

Bought the restaurant in August 1985 for $65,000.00, exercised the lease option on February 10, 1986.

The restaurant had a bad roof leak problem, since approximately 1984, that I did not know about and even after numerous complaints the roof was still not fixed.

In June 1987, the health department closed the restaurant down for two weeks and refused to open it until the roof is fixed. Business went down drastically

because of close down, which affected our cash-flow tremendously, but rent was paid as usual to Prufrock, and they appeared sympathetic and understanding to my problem, specially [sic] after the close down by the health department, for the late payment of rent to them.

On March and April in 1988, rent was handdelivered to Prufrock, March rent was late and April´s was paid two days in advance. Checks were not deposited like usual, instead Mr. Phil Cobb or his attorney handed the checks to Eddins Enterprises (land owner).*
Eddins called the bank to verify the checks and they took the checks by hand to the bank to have them stamped NSF. And according to the previous note they know that the checks will not be good unless it is deposited like before.

Eddins Enterprises sent a letter to my

attorney and my attorney advised me to get a cashier's check for March, April and May's rent in advance, which I did, but Eddins Enterprises refused the cashier's check to cncel my lease and hoping they will get out of the lawsuit, but thank God that we live in the United States of America.

I do not know if that is a double team effort between Eddins and Prufrock or stupidity on my part for trusting Prufrock, or a combination of both, but hopefully the truth will come out at the end.

*Due to a problem in our bank account, Prufrock was always calling us before depositing the checks, for the last year, and Prufrock knows that the checks will then be good only if it is deposited, because I told them so.

Phil Cobb (Prufrock)

On May 2nd, 1986, he told me that the signature on the option look [sic] like his signature. Later on, he was trying to led [sic] everybody believe that the option was for someone else. He also told me that M. Eddins wants to buy the restaurant. In the beginning of 1987 when he got a new attorney he changed his story to a complete opposite direction about the truth.

On page 27, line 25 from his deposition dated January 9, 1987, he said that we always had continuous leak problem at the restaurant.

On page 11, 12, 13 and 14 Mr. Phil Cobb said that they do not wait for the rent checks to pay Eddins, that rent is paid anyway the beginning of the month to Eddins Enterprises from Prufrock.

Mark Eddins

On June 6, 1986 Mr. Mark Eddins denied that this was his signature when he got a copy of the option and later changed to three different stories. In a motion for a Summary Judgment against me Mark Eddins did not tell the truth about the facts, according to his later statements, in his affidavid [sic] to the court of law.

Mr. Kelsoe (Eddins Attorney)

I received three letters from Mr. Kelsoe, the first letter denying the existance [sic] of the option, later the second letter changed to denying the signatures on the option by Mark Eddins and Phil Cobb, even though he was not representing Phil Cobb. The third letter he ignored the signatures and started to ask about the original of the document. Then I was sued by him.

In December 1986, Mr. kelsoe [sic] offered me $20,000.00 for Friendly Chevrolet to take the restaurant over.

This is a very short summary of the important events and that is why I will use my legal right so it can be heard by a jury in the Court of law, and that is what I am after. If the Jury decide [sic] I am wrong then that will be the end of it and I will pay the price.

Sincerely,

/s/
George B. Soliman

cc: Eddins Enterprises
cc: Mr. Kelsoe
cc: Mr. Phil Cobb
cc: Mr. Jay Goltz

CERTIFICATE OF SERVICE

I, George B. Soliman, do swear and declare that on this date, the _____ day of _____, 1990, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached petition for Writ of Certiorari on each party to the above proceeding or that parties counsel, and on every other person required to be served by depositing an envelope containing the above document in the United States Mail, properly addressed, to each of them.

The names and addresses of those served are as follows: Eddins Enterprises, Inc., by and through its attorneys, Jeffrey Clark and G. H. Kelsoe, 5830 Alpha Road, Suite 101, Dallas, Texas 75240; Hal Maxwell, 705

Ross Avenue, Dallas, Texas 75202; Prufrock Limited, Inc., 8115 Preston Road, Dallas, Texas 75225.

GEORGE B. SOLIMAN, PRO SE